IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MANUFACTURERS AND TRADERS TRUST COMPANY, a/k/a M&T BANK, a New York corporation, *Plaintiff*, v. SAMARIAN CAPITAL, LLC, a Nevada limited liability company, and MICHAEL A. DOLAN II, an individual, *Defendants*.	:	Civil Action No.

COMPLAINT

Plaintiff, Manufacturers and Traders Trust Company, a/k/a M&T Bank, by and through its attorneys, files this Complaint against Defendants, Samarian Capital, LLC and Michael A. Dolan II, alleging as follows:

I. THE PARTIES

1. Plaintiff Manufacturers and Traders Trust Company, a/k/a M&T Bank ("M&T Bank"), is a New York corporation with its principal place of business at One M&T Plaza, 8th Floor, Buffalo, New York, 14203-2399.

2. Defendant Samarian Capital, LLC ("Samarian") is a Nevada limited liability company with, upon information and belief, Thomas P. Lacloche, 2201 Alanhurst Drive, Henderson, Nevada 89052, as its registered agent. Samarian formerly operated from 90 Beta Drive, Pittsburgh, Pennsylvania 15238, but, upon information and belief, Samarian is now inactive.

3. Upon information and belief, Defendant Michael A. Dolan II ("Dolan" and collectively with Samarian, the "Defendants") is the managing and sole member of Samarian who maintains residences at 260 Bay Road, Naples, Florida 34102 and 5804 Walnut Street, Pittsburgh, Pennsylvania 15232.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district. Defendants are otherwise subject to this Court's personal jurisdiction with respect to this civil action, as Defendants expressly agreed to subject themselves to the jurisdiction of the federal and state courts within Allegheny County, and Defendants agreed that the courts within Allegheny County shall be the exclusive venue for any disputes arising out of the Settlement Agreement (as defined and further described below).

III. FACTUAL BACKGROUND

6. M&T Bank is a bank holding company that provides banking, insurance, investment, mortgage, and commercial financial services to individuals and businesses.

7. Dolan, on behalf of Samarian, opened a commercial customer deposit account with M&T Bank in Samarian's name, with an account number ending in 2311 (the "Account").

8. Upon information and belief, Dolan comingled the funds of Samarian with his personal funds and failed to maintain the corporate form or otherwise abused the corporate (or

limited liability company) form of Samarian, including using Samarian as a means to perpetrate the fraud and misrepresentations more specifically described below and otherwise failed to properly capitalize Samarian.

9. As of January 16, 2015, the Account had a balance of $218.88 as a result of a $1,000 deposit that was made on or around January 15, 2015 (the Account having already been overdrawn at that time by $781.12).

10. On or around January 16, 2015, Dolan caused Samarian to issue a check dated January 16, 2015, payable to Daniel Masterson in the amount of $250,000.

11. The check was presented for payment and paid by M&T Bank, which caused the Account to be overdrawn in the amount of $249,809.81.

12. Dolan and Samarian knew, or should have known, that there were insufficient funds in the Account, but they nevertheless made withdrawals from the Account in amounts exceeding the available balance.

13. After Dolan and Samarian overdrew the Account, M&T Bank was able to recover only a portion of the amount due and owing. As of September 2015, the total outstanding (negative) balance in the Account and the amount due and owing to M&T Bank was $75,414.36 (the "Overdraft Amount"). Additional service charges and other charges (as described above) have continued to accrue since that time.

14. The Account was governed by a Commercial Deposit Account Agreement, which obligated Samarian to pay the Overdraft Amount as well as interest, costs, and attorneys' fees associated with M&T's efforts to collect the Overdraft Amount (collectively, the "Debt"). A true and correct copy of the Commercial Deposit Account Agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.

15. Despite numerous collection attempts and demands, M&T Bank was unable to recover the Overdraft Amount, as Samarian and/or Dolan failed or refused to pay the debt due to M&T Bank.

16. On February 21, 2016, Samarian and Dolan entered into a Settlement Agreement and Release (the "Settlement Agreement") with M&T Bank. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit B**, and is incorporated herein by reference.

17. Pursuant to the Settlement Agreement, Samarian acknowledged full and complete responsibility to repay the Debt.

18. Among other terms in the Settlement Agreement, Samarian agreed to pay Plaintiff M&T Bank the Overdraft Amount by paying $5,000 as a good faith deposit (the "Good Faith Deposit") and to pay the remaining amount in three equal installments of $23,471.45 each (the "Remaining Settlement Payments").

19. Pursuant to the Settlement Agreement, the Remaining Settlement Payments were due on or before March 31, 2016, on or before April 30, 2016 and on or before May 31, 2016.

20. According to the terms of the Settlement Agreement, if Samarian failed to make timely payments under the terms of the Settlement Agreement, Samarian would be immediately liable for the full amount of the Debt, which included "the Overdraft Amount of $75,414.36 and any and all interest accrued, collection costs and attorneys' fees, less any payments actually made." See Ex. B., at § 3.

21. As of the date this Complaint was filed, Samarian has failed to make any payments, including the Good Faith Deposit or any of the Remaining Settlement Payments (collectively the "Settlement Payments") as required by the Settlement Agreement.

22. Samarian had an absolute, unequivocal legal obligation to tender the Settlement Payments as they came due, pursuant to the terms of the Settlement Agreement.

23. Despite the terms of the Settlement Agreement, Samarian failed to make such payments within the required time period and Samarian owes M&T Bank the Overdraft Amount of $75,414.36, plus interest charges (amounting to an additional $9,157.97 as of December 16, 2016), the Account service charges and other costs (amounting to an additional $360.00 as of December 16, 2016), and attorneys' fees and costs paid to date of $4,962.00, as well as, *inter alia*, all accruing and future collection costs and attorneys' fees.

24. M&T Bank has repeatedly demanded that Samarian and Dolan pay the past due Debt.

25. Samarian and Dolan have failed and refused to pay and remain delinquent in paying the Debt.

26. As a result of Samarian's and Dolan's failure to pay the Debt, M&T Bank has incurred, and will continue to incur, collection costs, attorneys' fees, and other expenses and losses.

27. Accordingly, M&T Bank has commenced this action to recover all sums due and owing and all other legal relief to which it is entitled.

COUNT ONE
(Breach of Settlement Agreement – Samarian)

28. Plaintiff M&T Bank incorporates by reference Paragraphs 1 through 27 as if set forth fully herein.

29. On February 21, 2016, Samarian and Dolan entered into the Settlement Agreement with M&T Bank.

30. Under the Settlement Agreement, Samarian agreed to fully repay the Debt through a Good Faith Deposit and three Remaining Settlement Payments.

31. Despite Samarian's clear obligation to pay the Debt in a timely manner according to the Settlement Agreement, Samarian breached the Settlement Agreement by failing and/or refusing to make any of the Settlement Payments.

32. At all relevant times, M&T Bank performed all conditions precedent to the Settlement Agreement and is, therefore, entitled to payment in full, plus interest, costs, expenses, and attorneys' fees, under the terms of the Settlement Agreement.

33. To date, the total Debt Samarian owes to M&T Bank exceeds $89,894.33.

34. M&T Bank has repeatedly demanded that Samarian and Dolan pay the Debt.

35. Samarian and Dolan have failed to pay the Debt, and M&T Bank was required to file this legal action to collect the amounts due and owing to M&T Bank.

36. The Settlement Agreement provides, *inter alia*, that M&T Bank is entitled to recover from Samarian and Dolan all interest accrued, collection costs, and reasonable attorneys' fees incurred by M&T Bank in connection with the Account, to defend or enforce any of M&T Bank's rights or remedies, for any other legal services and collection costs including those costs associated with enforcing the Settlement Agreement. See Ex. B. at p. 1 and § 3.

37. Accordingly, M&T Bank is entitled to collect all costs and expenses, including reasonable attorneys' fees, which M&T Bank incurs in connection with or relating to this action.

38. As a direct, legal, and proximate cause of Samarian's breach of the Settlement Agreement, M&T Bank has suffered and sustained damages in an amount exceeding the jurisdictional limit, plus interest, expenses, costs, and attorneys' fees.

39. M&T Bank is thus entitled to payment, in full, plus interest, costs, expenses and attorneys' fees, under the terms of the Settlement Agreement.

40. By reason of the foregoing, Plaintiff M&T Bank is entitled to judgment in its favor and against Defendant Samarian in an amount to be determined by this Court, but in no event less than $89,894.33 as of December 16, 2016, together with accrued and accruing interest and all collection costs, including reasonable attorneys' fees, incurred by M&T Bank in enforcing the Settlement Agreement, and such other and further relief as this Court may deem appropriate.

COUNT TWO
(Fraudulent and/or Negligent Misrepresentation – Samarian and Dolan)

41. Plaintiff M&T Bank incorporates by reference Paragraphs 1 through 27 as if set forth fully herein.

42. Samarian and Dolan have intentionally, knowingly, recklessly, and/or negligently made misrepresentations regarding past and existing material facts to M&T Bank in the following particulars, among others:

a) Representations that Samarian and/or Dolan intended to open the Account for legitimate business purposes;

b) Representations related to the withdrawals made on the Account which greatly exceeded the known amount of available funds in the Account to cover the withdrawals;

c) Representations related to the willingness or ability to replenish funds removed from the Account; and/or

d) Representations related to and entry into the Settlement Agreement, purportedly in good faith, and promising to make certain payments thereunder, including the initial Good Faith Deposit amount and those certain Remaining Settlement Payments.

43. The foregoing representations and material omissions of fact were untrue and were made without any reasonable grounds for Samarian and Dolan believing their veracity.

44. The foregoing misrepresentations were material.

45. Samarian and Dolan made the foregoing misrepresentations with the intent to induce M&T Bank to rely on the misrepresentations.

46. M&T Bank was unaware of the falsity of the foregoing misrepresentations.

47. M&T Bank reasonably relied on the foregoing misrepresentations to its detriment.

48. As a result of Samarian and Dolan's misconduct, M&T Bank has been damaged in an amount in excess of $89,894.33 as of December 16, 2016, together with accrued and accruing interest and all collection costs, including reasonable attorneys' fees.

COUNT THREE
(Fraud– Samarian and Dolan)

49. Plaintiff M&T Bank incorporates by reference Paragraphs 1 through 27 as if set forth fully herein.

50. Through the words, actions and omissions of Dolan and Samarian (through its representatives) the Defendants created false impressions concerning numerous material aspects of the Defendants' transactions and contractual relations with M&T Bank, including, among other things:

a) Representations that Samarian and/or Dolan intended to open the Account for legitimate business reasons and thereafter intentionally causing the Account to become overdrawn in an amount of $249,809.81;

b) Overdrawing the Account by issuing a $250,000.00 check while knowing that there was less than $220 in the Account to cover the withdrawal or otherwise knowing that the available amount of funds in the Account were significantly less that the $250,000.00 check;

c) Representations related to the willingness or ability to replenish funds removed from the Account; and/or

d) Entry into the Settlement Agreement, purportedly in good faith, and promising to make certain payments thereunder, including the initial Good Faith Deposit amount and those certain Remaining Settlement Payments, and thereafter failing to make a single payment.

51. The foregoing false impressions were material.

52. Samarian and Dolan made the foregoing false impressions with the intent to deceive and induce M&T Bank's reliance.

53. At all relevant times, M&T Bank was unaware of the underlying facts and the true fraudulent intent of Samarian and/or Dolan.

54. M&T Bank reasonably relied on the foregoing false statements and wrongful omissions by Dolan and Samarian and its representatives.

55. As a result of Samarian and Dolan's fraud, M&T Bank has been damaged in an amount in excess of $89,894.33 as of December 16, 2016, together with accrued and accruing interest and all collection costs, including reasonable attorneys' fees.

56. The fraudulent acts of Defendants were knowing, intentional and outrageous, thus entitling M&T Bank to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff M&T Bank respectfully requests the following relief from the Court:

(A) Award compensatory and consequential damages to M&T Bank in excess $89,894.33 as of December 16, 2016, plus accrued and accruing interest and all collection costs, including reasonable attorneys' fees, against Defendants Samarian and Dolan;

(B) Award punitive damages to M&T Bank in an amount deemed appropriate to punish Defendants Samarian and Dolan for their willful and outrageous disregard of the rights of M&T Bank; and

(C) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: March 15, 2017

By: */s/ Helen Sara Ward*

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